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JANICE MAYS,
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Congress of the United States

U.S. House of Representatives

COMMITTEE ON WAYS AND MEANS

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September 23, 2008

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BRETT LOPER,
MINORITY STAFF DIRECTOR

The Honorable Henry M. Paulson
Secretary of the Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Mr. Secretary:

As you know, we are working to get the Pension Protection Act (PPA) technical corrections bill passed and signed into law. We have made many attempts at moving this Bill as reflected in Congressional activity for H.R. 3361, the "Pension Protection Technical Corrections Act of 2007," and H.R. 6382, the "Pension Protection Technical Corrections Act of 2008," as passed in the House, and S. 1974, the "Pension Protection Technical Corrections Act of 2008," as passed by the Senate. In spite of procedural challenges, we are continuing to work on the passage of this legislation.

We are aware of and appreciate your efforts, as reflected in the September 18, 2008 Release, to resolve the application of Section 436 of the Internal Revenue Code, to plans that utilize an "end of year" valuation date. The limitations you face, absent the enactment of the pension technical corrections bill is the basis for writing to ask for your assistance in implementing Section 436, as technically corrected in H.R. 3361, H.R. 6382, and S. 1974. Both House and Senate versions of the technical corrections bill, including the latest House bill H.R. 6382, contain a provision that would provide the Secretary of the Treasury authority to prescribe rules for the application of benefit restrictions when the plan uses an alternate valuation date. This technical correction acknowledges that without modification, Section 436 would result in hardship for plans that use an alternate valuation date, more specifically "end of year" valuation date.

Section 436 was added to the Code by PPA. It provides that certain payment and benefit restrictions apply if the adjusted funding target attainment percentage (AFTAP) of a defined benefit pension plan is less than 80 percent. It also provides that no additional benefits can be accrued if the AFTAP falls below 60 percent. The AFTAP for the plan year is the ratio of the plan assets to the funding target of the plan, adjusted for annuity purchases for non-highly compensated employees over the past two years. In determining the AFTAP, both the assets and liabilities of the plan are determined as of the valuation date of the plan.

Under Treasury's current interpretation of Section 436, "end of year" valuation plans would be required to calculate the 2008 AFTAP before October 1, 2008, based on the December 31, 2007, valuation results "with appropriate adjustments" as long as final calculations using the December 31, 2008, valuation results do not produce a "material" change. Generally, plans that use an "end of year" valuation date are unlikely to predict within this margin of error because the "end of year" valuation results are more likely to be different from the data computed under the 2007 valuation results "with adjustments." Plans that cannot comply with this requirement would be required to freeze all benefit accruals as of October 1, 2008. Plans that use an "end of year" valuation date would be forced into the difficult position of having to either (1) freeze benefit accruals for all participants as of October 1, 2008, or (2) risk disqualification of the plan by continuing benefit accruals before computing the final AFTAP for the plan year.

Therefore, we are requesting that Treasury provide guidance for plans that use an "end of year" valuation date that would permit such plans to calculate the 2008 AFTAP, and any intervening years before the passage of the pension technical corrections bill, based on the plan's most recent valuation date. For example, the plan would compute the 2008 AFTAP (by October 1, 2008) based on the December 31, 2007, valuation of the plan assets and liabilities.

We believe that the request for such modification reflects the Congressional intent of Section 436, as reflected in both the House and Senate versions of the pension technical corrections bill. We are concerned that absent such a modification plans that use an "end of year" valuation date could face significant hardship in their attempt to comply with Section 436 of the Code.

We are aware this somewhat "piece-meal" approach to implementing pension technical corrections could cause your Department some administrative difficulty. However, because of the time sensitivity of this issue, and the importance to the small plan sector which provides pension benefits to a significant and growing number of our workers, we are requesting your immediate attention to this matter.

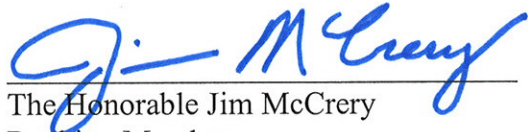
The Honorable Henry M. Paulson
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Thank you for your cooperation in this matter. Please feel free to contact us or have your staff contact Mildeen Worrell at (202) 225-5522 or Aharon Friedman at (202) 225-4021 for the Committee on Ways and Means, and Bridgett Mallon or Chris Condeluci at (202) 224-4515 for the Committee on Finance should you any questions.

Sincerely,



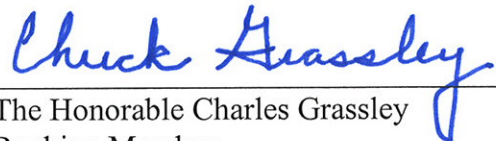
The Honorable Charles B. Rangel
Chairman
Committee on Ways and Means
U.S. House of Representatives



The Honorable Jim McCrery
Ranking Member
Committee on Ways and Means
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The Honorable Max Baucus
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The Honorable Charles Grassley
Ranking Member
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